

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**HOUSTON GASTON**  
Claimant

VS.

**CHICAGO EXPRESS, INC.**  
Respondent  
Self-Insured

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Docket No. 245,523

**ORDER**

Claimant appeals from an Order entered by Administrative Law Judge Robert H. Foerschler on September 1, 1999.

**ISSUES**

The issues on appeal are:

1. Does the Kansas Workers Compensation Division have jurisdiction of this claim? This question is answered in this case by determining whether claimant's contract of employment was made in Kansas.
2. Did claimant give timely notice of accident as required by K.S.A. 44-520?

The ALJ found Kansas does have jurisdiction but also found that claimant failed to give timely notice. On appeal, claimant asks the Board to find claimant did give timely notice and asks the Board to determine whether claimant did suffer accidental injury arising out of and in the course of his employment. The ALJ found it unnecessary to address this second issue because he had denied benefits based on failure of the notice. Respondent, on the other hand, asks the Board to reverse the finding that the Kansas Act applies but affirm the finding that claimant failed to give timely notice.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record and considering the arguments, the Appeals Board concludes the Order by the Administrative Law Judge should be affirmed.

The evidence shows that during a phone conversation with claimant in Kansas, claimant accepted an employment offer. He later went to Missouri for the drug test. Consistent with its ruling in *Shehane v. Station Casino*, WCAB Docket No. 222,814 (March 1999), the Board agrees with the conclusion by the ALJ that a binding contract of employment was entered in Kansas. The drug test was a post-hire test with the potential of giving grounds for termination, but claimant was hired as of the phone conversation and his acceptance in Kansas. Kansas does, therefore, have jurisdiction.

But the Board would also affirm the ALJ's conclusion that the claimant did not give timely notice. On this point, the record includes directly contradicting testimony from the claimant and Mr. Brett T. Marshall. Claimant testified he reported the injury to Mr. Marshall on several occasions. Mr. Marshall denied each. Claimant also testified that he reported the injury to the dispatcher. The dispatcher did not testify but claimant's testimony is so contradicted by Mr. Marshall's that the ALJ would be warranted, if he believed Mr. Marshall, in disregarding the testimony by claimant that he gave notice to the dispatcher. The ALJ had the opportunity to observe both, and his evaluation of their credibility is given some deference in reaching the conclusion that the Order should be affirmed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order entered by Administrative Law Judge Robert H. Foerschler on September 1, 1999, should be, and the same is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of October 1999.

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BOARD MEMBER

c: Leah Brown Burkhead, Mission, KS  
Kip A. Kubin, Overland Park, KS  
Robert H. Foerschler, Administrative Law Judge  
Philip S. Harness, Director